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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Revision of Part 22 and Part 90 )  
Commission's Rules to Facilitate )  
Future Development of Paging )  
Systems )

WT Docket No. 96-18

Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )

PP Docket No. 93-253

To: The Commission

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COMMENTS OF  
AMERICAN PAGING, INC.

American Paging, Inc. ("API"), by its attorneys, comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceedings regarding the proposed use of geographic licensing for paging services and the proposed adoption of competitive bidding rules for mutually exclusive paging applications.

API filed comments on March 1, 1996 opposing adoption of the interim licensing proposals as set forth in the NPRM. We suggested changes in those proposals because we believe that adoption of the interim licensing proposals as presented in the NPRM would cripple the dynamic growth and expansion of public service by the paging industry and is otherwise unjustified. Our comments here are intended to be an extension of those comments to address the related areas of the Commission's proposals for licensing and competitive bidding.

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The primary goal of these proceedings should be to assure that the paging industry remains a vital dynamic competitive industry providing valuable public services to the tens of millions numbers of paging users.

The Commission's efforts to provide for an orderly transition to geographic licensing, to promote a flexible operating environment and to streamline licensing procedures can be achieved without sacrificing the reasonable public expectation that reliance on paging services will be unimpaired as this process unfolds.

We discuss here various aspects of the Commission's licensing and competitive bidding proposals on which the Commission has requested comment. We support prompt adoption of geographic licensing for the 929 and 931 MHz paging bands, protection of the rights of incumbent licensees, procedures to deter speculation, and competitive bidding rules specifically designed to address the unique needs of the paging industry.

### **DISCUSSION**

#### **1. Nationwide Channels.**

We agree with the Commission that no other applicant should be permitted to apply on the channels licensed to CCP and PCP licensees who have obtained nationwide exclusivity. (NPRM, Para. 26) The public interest in new and expanded paging service offerings is clearly served by permitting nationwide licensees to develop their networks on these channels.

## 2. Defining Service Area.

We agree that MTAs are the most appropriate geographic area boundaries for paging systems on 929 and 931 MHz frequencies. Among the different geographic definitions presented in the NPRM (Para. 33), MTAs appear to correspond in general terms to service area needs in the paging industry and to the Commission's needs for administrative efficiency. Competitive bidding procedures can be adopted to permit geographic aggregation of licenses for paging providers who require larger service areas. Joint licensing, joint ventures and possibly license partition can address the needs of providers who choose to serve areas smaller than an entire MTA.

## 3. Treatment of Incumbents.

The Commission is correct in tentatively concluding that "...geographic licensees would be required to provide protection to all co-channel systems." (NPRM, Para. 37) These protections should be provided to authorized as well as "constructed and operating" systems of incumbent licensees. Also the definition of interference contours should be revised from that proposed in the NPRM (Paras. 49-56) to reflect current industry experience based upon empirical studies. It is our understanding that other participants in these proceedings will be filing such studies.

## 4. Coverage Requirements.

The adoption of coverage requirements is important to encourage continued growth and vigorous competition in the industry. It is also essential to deter speculation. We support adoption of the one-third of total MTA population build-out

requirement within three years and two-thirds requirement within five years as proposed by the Commission.

We propose additional requirements be adopted to deter speculation and anti-competitive bidding strategies:<sup>1</sup> (1) establish a one year deadline requiring a minimum level of coverage, such as ten percent of MTA population; (2) substitute a rule "waiver" procedure (subject to public notice and comment) for the "election/notification" procedure currently proposed for licensees who want to make a "substantial service" alternative showing (NPRM, Para. 41),<sup>2</sup> and (3) make clear that failure to meet coverage requirements or to obtain grant of a "waiver" as provided here, if applicable, will result in automatic cancellation of the geographic license involved.

#### 5. Eligibility.

We support adoption of the Commission's proposal to permit incumbents to form consortia or joint ventures to apply collectively for geographic licenses. (NPRM, Para. 66) We agree that the option of partitioning geographic licensees adds flexibility to the licensing process. Incumbent licensees with existing systems which

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<sup>1</sup> The Commission itself has identified possible anti-competitive practices involving bidding to acquire licenses in order to block expansion of incumbent systems. (NPRM, Para. 43)

<sup>2</sup> The Commission should require that any licensee proposing "substantial service" as an alternative to full compliance with standard three and five year population-based build-out requirements should request waivers within one year of the license grant date. Initiation of waiver proceedings early in the license term, scrutiny in public proceedings and prompt Commission decisions will discourage speculation and promote early introduction of service in unserved areas.

extend from one MTA area into another may find access to partitioned licenses a useful option to meet coverage needs encompassing only a part of one of the MTAs involved. (NPRM, Para. 66)

6. Channel Aggregation Limit.

We oppose adoption of any aggregation limit for paging channels. The circumstances which may have caused the Commission to adopt such limits for narrowband PCS are not germane to the longstanding and complex development of incumbent frequency uses in the bands involved here.

7. Competitive Bidding Issues.

We support use of a multi-round simultaneous bidding methodology to auction MTA licenses. While the number of licenses potentially to be licensed in a single auction would be quite large, we support combined licensing of 929 and 931 MHz bands. This preference is subject to the practical limitations imposed by the Commission's auction software which may or may not have the capacity to auction so many licenses in a single auction. If these practical limits preclude an auction of this scope, then we support segmenting or grouping licenses by frequency blocks up to the maximum level which FCC software can support.

We agree with the Commission that a license-by-license-stopping rule would be most appropriate for paging services. (NPRM, Para. 83) We do not believe that this stopping rule avoids the need for activity rules. The tactical incentives for opportunistic bidders to hold back remains a threat to prolong and destabilize

the eventual close of the auction.<sup>3</sup> The Milgrom-Wilson approach using the "60-80-95" percentages discussed in NPRM (Para. 86) should be adopted as an additional tool to complement license-by-license stopping.

8. Upfront Payments.

The need to discourage frivolous or speculative bidders in the competitive bidding process is clearly important to protect the integrity of the Commission's processes so that serious, qualified bidders are not unfairly disadvantaged. The need to protect the integrity of the auction process is critically important when the MTA licenses to be auctioned encompass areas served by incumbent co-channel licensees, in some cases with substantial capital investment in existing facilities and hundreds of thousands of existing paging customers served by these facilities.

In view of the potential disruptive impact of auctions affecting service expectations of tens of millions of existing paging users, we urge the Commission to adopt procedures requiring minimum upfront payments for individual MTA licenses. This would mean that a bidder is required to pay some minimum amount for each MTA license on which that bidder wants to be qualified to bid. We do not intend by this proposal to discourage the bidding participation of serious, qualified small businesses and consequently we are not prepared at this time to propose what the dollar amounts of

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<sup>3</sup> The Commission's initial analysis appears to address the circumstances of strategic bidders, for whom the loss of a specific market could be central to the accomplishment of their services plans. Bidders pursuing "opportunistic" strategies in the auctions do not have these same incentives.

these minimums should be. We believe this approach, or some comparable mechanism, is needed to protect the integrity of the auction process from frivolous or speculative bidding conduct potentially disrupting orderly expansion of existing service.

#### CONCLUSION

As stated here, we support the Commission's efforts to encourage competition through streamlining its licensing procedures and deregulating many aspects of its current regulatory oversight responsibilities. We believe these goals can be accomplished with maximum public benefit if reasonable steps are taken to avoid disruption or impairment of services to the tens of millions of existing paging users. The paging industry is competitive, dynamic, uniquely spectrum efficient and delivers high value services to the public on a cost-effective basis. By any reasonable measure, this industry is already a "success story" to which the Commission can point as a model for other industries. Our proposals in these comments are offered to ensure that this industry "success" story is sustained as the transition to geographic licensing takes place.

Respectfully submitted,

AMERICAN PAGING, INC.

March 18, 1996

By

  
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CERTIFICATE OF SERVICE

I, Judy Cooper, a legal secretary for the law firm of Koteen & Naftalin, do hereby certify that a copy of the foregoing "Comments" was sent by first class U.S. mail, postage prepaid, on this 18th day of March, 1996, addressed to the following:

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**March 18, 1996**

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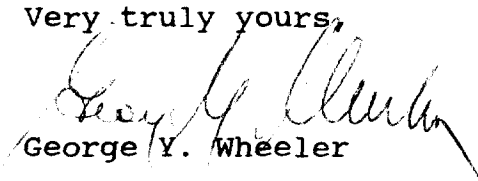
**Re: American Paging, Inc.**  
**WT Docket No. 96-18**  
**PP Docket No. 93-253**

**Dear Mr. Caton:**

Transmitted herewith on behalf of American Paging, Inc. are an original and nine copies of its comments in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

  
George Y. Wheeler

**Enclosure**